KNOX GGM 119056

DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-204874 DATE: July 28, 1982

MATTER OF: Availability of funds collected by the Bureau of Land Management as a result of coal trespasses on public lands.

DIGEST: Funds collected by the Bureau of Land Management as a result of coal trespasses on Federal lands, pursuant to section 305(a) of the Federal Land Policy and Management Act, 43 U.S.C. § 1735(a) (1976), may be used only to repair property damage, actual or potential, to the specific lands involved in the trespass. If any funds remain after making such repairs, the Secretary of the Interior has discretion to refund excess amounts to the party from whom they were collected. The Department of the Interior's conclusion that funds in excess of those needed to repair the property for which they were collected may be used to rehabilitate other public lands is inconsistent with the express language of section 305. Where refund of excess collections would be inappropriate or undesirable, such funds must be deposited into the general fund of the Treasury as miscellaneous receipts.

By letter dated September 17, 1981 (File No. 1373-822), Mr. Arnold E. Petty, Acting Associate Director, Bureau of Land Management, U.S. Department of the Interior, requests our concurrence in an opinion of the Department's Acting Associate Solicitor, Energy and Resources, regarding the availability of funds received by the Bureau of Land Management (BLM) as a result of coal trespasses on Federal lands. Mr. Petty stated that the opinion of the Solicitor's Office was provided in response to his request for advice on whether section 305(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1735(a) (1976), requires the funds in the section 305(a) account to be expended, if at all, only for the particular improvement or rehabilitation work necessitated by the action leading to the receipt of the funds. In response to Mr. Petty's request, the Solicitor's Office concluded that FLPMA does not so restrict the expenditure of section 305(a) funds. According to the Solicitor's Office, any funds in the section 305(a) account that are not required to repair damage caused by the action leading to the receipt of those funds may be used for the purposes of section 305(a) on other public lands.

For the reasons discussed below, we cannot concur with the opinion of the Solicitor's Office. After examining the provision in question and its legislative history, we conclude that funds in the section 305(a) account are available only to be used for the specific rehabilitation work necessitated by the action leading to the receipt of those particular funds. Any amount collected in excess of that

actually needed may be refunded to the party from whom they were collected, in the discretion of the Secretary. In those cases where it would be inappropriate to refund excess amounts, those amounts must be deposited into the general fund of the Treasury as miscellaneous receipts.

Section 305 of FLPMA provides as follows:

> "(a) Any moneys received by the United States as a result of the forfeiture of a bond or other security by a resource developer or purchaser or permittee who does not fulfill the requirements of his contract or permit or does not comply with the regulations of the Secretary; or as a result of a compromise or settlement of any claim whether sounding in tort or in contract involving present or potential damage to the public lands shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available, until expended as the Secretary may direct, to cover the cost to the United States of any improvement, protection, or rehabilitation work on those public lands which has been rendered necessary by the action which has led to the forfeiture, compromise, or settlement.
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> "(c) If any portion of a deposit or amount forfeited under this Act is found by the Secretary to be in excess of the cost of doing the work authorized under this Act, the Secretary, upon application or otherwise, may cause a refund of the amount in excess to be made from applicable funds." 43 U.S.C. § 1735 (1976) (emphasis supplied).

The underscored language plainly states that section 305(a) funds are to be expended to rehabilitate those public lands the damage to which led to receipt of the funds in question. A reading of the statute, such as that suggested by the Solicitor's Office, that would permit use of section 305(a) funds for repair of damage done to other public lands, would be at odds with the express language of the statute. Such a reading would also be inconsistent with the express inclusion, in section 305(c), of permissive authority to refund to individual resource developers, purchasers, or permittees excess deposits or amounts forfeited under the act. 43 U.S.C. § 1735(c).

With regard to this latter point, the authority to refund excess collections was included in lieu of having excess amounts deposited in the general fund of the Treasury as miscellaneous receipts, as in a previous version of the statute (see section 303 of the Public Land

Administration Act, Pub. L. No. 86-649, § 303, 74 Stat. 506, 508 (1960)), or in lieu of treating excess collections as a source of revenue for section 305(a) rehabilitation activities in general. In our opinion, section 305 of FLPMA, read as a whole, shows that funds collected under this provision were intended by the Congress to be segregated for the rehabilitation of individual damaged lands, with excess amounts to be refunded to the parties from whom they were collected, where appropriate, in the judgment of the Secretary.

As a general rule, a statute that is clear and unambiguous on its face should be construed to mean that which it plainly expresses. See 2A A. Sutherland, Statutes and Statutory Construction § 46.01, at 48 (4th ed. 1973). This rule of construction, however, will not be applied if it would lead to a result that would be futile, unreasonable, or at variance with the policy of the statute as a whole. United States v. American Trucking Associations, 310 U.S. 534 (1940); 60 Comp. Gen. 341, 436 (1981). In the present case, the express language of the provision in question is neither unreasonable, nor is it inconsistent with the policy of FLPMA as a whole. See generally 43 U.S.C. § 1701(a) (1976). As a general matter, therefore, it is our opinion that section 305(a) requires that funds collected under this provision be used to remedy the particular damage that was the cause for the collection itself, with any amount in excess of that needed for repair to be refunded to the appropriate party.

The opinion of the Solicitor's Office cites two further points that it considers to favor its position: First, that the Senate report on an earlier version of the bill later enacted as FLPMA described the section 305(a) account as being composed solely of funds collected in excess of those needed for repairs. See S. Rep. No. 94-583, 95th Cong. 1st Sess. 56 (1975) ("money collected in claims cases, shall be used, to the extent necessary, for any rehabilitation work arising from the forfeiture, tort, or contract, and * * * the balance, if any, shall go into a separate account in the Treasury."). This description, however, is inconsistent with the actual language of the statute, which provides that all funds collected under the provision are to be deposited into the section 305(a) account, to then be used for the specific rehabilitation needed, or for refunds, if appropriate. We consider the statutory language to prevail.

Secondly, the Solicitor's Office opinion cites as support for its position the fact that the annual appropriation of funds in the section 305(a) account contains no specific restriction on the expenditure of such funds. For example, the appropriation for fiscal year 1981 provided: "[F]or rehabilitation of damaged property, such amounts as may be collected under * * * section 305(a) [of FLPMA] * * *." Pub. L. No. 96-514, tit. I, 94 Stat. 2957, 2958 (1980). In our opinion, however, the general language of the appropriations act does not repeal language contained in the authorizing legislation setting out the purposes for which section 305(a) funds may be used. Appropriations to

carry out enabling or authorizing laws must be expended in strict accordance with the original authorization, both as to the amount of funds to be expended and the nature of the work authorized. See 36 Comp. Gen. 240, 242 (1956). To hold otherwise would require all appropriation statutes to specifically include, either directly or by reference, all restrictions contained in the authorizing legislation in order for those restrictions to remain binding on the agency involved.

As indicated above, the express language of FLPMA only specifies two methods for disposition of section 305(a) funds: rehabilitation of the particular property that created the need for the collection, and refund of excess amounts to appropriate resource developers, purchasers, or permittees. The latter method of disposition, however, is permissive, perhaps in recognition that refunds would not be appropriate in every instance. For example, it might be improper to refund to a resource trespasser funds that had been collected in compromise or settlement of a trespass claim, unless that collection had been intended solely to cover the costs of repairing the land in question.

Consequently, it appears that FLPMA does not provide a method for disposing of section 305(a) funds that exceed the cost of repairing the specific property involved but that are not suitable for refund. It is the view of the Solicitor's Office that it would be desirable in terms of "sound public land administration principles" to use such excess funds for the general rehabilitation purposes of section 305(a). Nonetheless, this Office has held that the funds in a revolving account may be expended only for the purposes specified in the account's authorizing legislation; a revolving fund balance may not be diverted to another use, no matter how desirable. 37 Comp. Gen. 564 (1958).

Having stated our disagreement with the Solicitor's Office as to BLM's use of excess section 305(a) funds, the question remains as to the proper manner in which such funds should be disposed. We see only one option: funds received for the use of the United States may not be retained by the collecting agency in the absence of specific statutory authority, but must be deposited in the general fund of the Treasury as miscellaneous receipts. 31 U.S.C. § 484 (1976); 27 Comp. Gen. 352 (1947) (regarding the disposal of monies received for damage done to Federal property). FLPMA contains no specific statutory authority for BLM to dispose of section 305(a) funds except to pay for the rehabilitation of the specific property involved, or to make appropriate refunds. Consequently, it is our opinion that section 305(a) funds that are not disposed of by either of these two methods must be deposited in the general fund of the Treasury as miscellaneous receipts.

for Milton J. Socolar
Comptroller General
of the United States